IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4885 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

G S R T C

Versus

D B VANKAR

Appearance:

1. Special Civil Application No. 4885 of 1990
MR PRANAV G DESAI for Petitioner No. 1
PARTY-IN-PERSON for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 28/11/2001

ORAL JUDGEMENT

In this petition under Article 227 of the Constitution, the Gujarat State Road Transport Corporation has challenged the judgment and award dated 20.12.1989 passed by the Labour Court, Nadiad in Reference (LCN) No. 468 of 1986 whereby the Labour Court

set aside the order of dismissal passed by the Corporation against the respondent-workman and directed the Corporation to reinstate the respondent, not on the original post of conductor but, on the post of helper in the workshop, without backwages for the intervening period.

2. The Corporation had held a departmental inquiry against the respondent for the charge that the respondent had collected fare from the passengers in the bus on 12.3.1986, but the respondent had not issued tickets and that the respondent had also not refunded the excess amount collected from the passengers. The Corporation thereafter passed the order of dismissal which came to be challenged before the Labour Court. The respondent contended that there were 80 passengers in the bus and that because there was heavy rush, he could not issue tickets to the concerned passengers. The respondent did not press his challenge to the legality and validity of the departmental inquiry, but submitted that the penalty was disproportionate, harsh and excessive. The Labour Court held that since the respondent had put in 19 years service before the order of dismissal was passed, the penalty of dismissal was unduly harsh and disproportionate, but since the Corporation had produced the default card showing that the respondent was habitual in such misconduct relating to tickets, the respondent was not required to be reinstated as a conductor, but he was required to be reinstated as a helper in a workshop. It is the aforesaid award which is challenged in this petition.

3. Heard Mr Pranav G Desai, learned counsel for the petitioner-Corporation. Though served, none appears for the respondent.

4. The learned counsel for the petitioner-Corporation submitted that when the legality and validity of the departmental inquiry was not challenged, the Labour Court erred in holding that the penalty was excessive and in directing the Corporation to reinstate the respondent, albeit on the lower post.

5. It is true that the Labour Court did not disturb the finding that the respondent had committed misconduct, but having regard to the fact that the respondent had already put in 19 years service in the petitioner-Corporation before the impugned order of dismissal was passed and having regard to the fact that the Labour Court had not reinstated the respondent to the original post of conductor, but the direction for

reinstatement was given for the post of helper and that too without backwages for the intervening period of three years, in exercise of extraordinary jurisdiction under Article 227 of the Constitution, the Court does not find any reason to interfere with the impugned award of the Labour Court, as the impugned award does not suffer from any jurisdictional error nor does it suffer from any error apparent on the face of the record.

6. In view of the above discussion, the petition deserves to be dismissed and is accordingly dismissed.

Rule is discharged with no order as to costs.

(M.S. Shah, J.)
sundar/-